



California Fair Political Practices Commission

March 21, 1989

Honorable Kim Mueller
Councilmember, City of Sacramento
City Hall, Room 205
915 I Street
Sacramento, CA 95814-2672

Re: Your Request for Advice
Our File No. A-89-119

Dear Ms. Mueller:

We have received your request for advice regarding the mass mailing provisions of the Political Reform Act (the "Act").^{1/} As a councilmember, you want to ensure that all newsletters and notices sent to your constituents are in compliance with the new mass mailing provisions contained in Section 89001, as amended by Proposition 73.

QUESTIONS

1. What is the operative date of Regulation 18901?
2. May elected officials, employees and agents of the City of Sacramento utilize the exceptions set forth in Regulation 18901(f) now?

CONCLUSIONS

1. Emergency Regulation 18901 became effective on August 8, 1988. An amended and permanent version of this regulation was approved by the Office of Administrative Law on March 13, 1989 and will be effective on April 12, 1989. We advise that the permanent regulation be followed now.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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2. Elected officials, employees and agents of the City of Sacramento may currently utilize the exceptions set forth in Regulation 18901(f). All the exceptions to the mass mailing provisions are to be construed narrowly.

FACTS

You, as well as other members of the Sacramento City Council, send your constituents community meeting notices and other similar documents, which contain the names of one or more city council members.

ANALYSIS

Section 89001 of the Political Reform Act, as amended by Proposition 73, provides that "no newsletter or other mass mailing shall be sent at public expense." The Commission has determined that the intent of the voters in adopting Proposition 73 was to prevent elected officers from gaining an advantage from incumbency by using public funds to send out newsletters and other mass mailings which increase their name recognition.

The Commission adopted Regulation 18901 (copy enclosed) to implement Section 89001. Regulation 18901 provides in pertinent part:

(a) Except as provided herein, a newsletter or other mass mailing is "sent at public expense" within the meaning of Government Code Section 89001 if any of the costs of design, production, printing or distribution, is paid for with public moneys as defined in Government Code Section 85102(e).

Subdivision (f) of Regulation 18901 lists several exceptions to the general rule that no newsletter or mass mailing shall be sent at public expense. However, please note that all exceptions to the mass mailing provisions are to be construed narrowly. (See Estate of Banerjee (1978) 21 Cal. 3d 527, 540.) For example, Regulation 18901(f)(8) provides that:

(f) The following newsletters or other mass mailings are not prohibited by Government Code Section 89001 if the mailing is sent to the persons specified in each instance below and the mailing consists of:

* * *

(8) Mailings sent to the elected officer's constituents which directly relate to that elected official's incumbent

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governmental duties and which solely include the time, date, place, and a concise description of the subject matter of a public meeting to be held by the elected officer; (emphasis added).


To apply this exception, the mailing must directly relate to the elected official's duties, must only include the time, date, and place of the meeting, and a concise description of the subject matter. Furthermore, this exception does not allow the mailing to be signed by the official.

The exceptions set forth in 18901(f) may be utilized now, and specifically subdivision (8) may allow many of the notices sent by city council members, as long as the exception is construed and applied narrowly.

If you have any questions regarding the mass mailing exceptions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: 
Jill R. Stecher
Counsel, Legal Division

DMG:JRS:plh

Enclosure



FEB 21 8 47 AM '89

OFFICE OF THE
CITY COUNCIL

KIM MUELLER
COUNCILMEMBER
DISTRICT SIX

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 205
915 I STREET
SACRAMENTO, CA
95814-2672

916-449-5467

February 16, 1989

Diane M. Griffiths, General Counsel
California Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

RE: Mass Mailing Provisions of Proposition 73

Dear Ms. Griffiths:

I am an elected member of the City Council of the City of Sacramento. In the past, I, along with other members of the Council, have sent our community meeting notices and other similar documents on which the names of one or more Council members have appeared. I have had an opportunity to review the provisions of Section 18901 of Title II of the California Administrative Code, as adopted at the December 6, 1988 meeting of the Fair Political Practices Commission. While the provision of subsection (f) of this new regulation would appear to allow most, if not all, of the types of notices that were previously sent out by Council members, there remain several questions, including the issue of the effective date of the new regulation, that remain unanswered. In discussing this matter with other officers elected to both local and state governmental positions, I have learned that different opinions have been given on the applicability of the new regulations.

Pursuant to Government Code Section 83114, I would respectfully request on my behalf, as well as on behalf of the City of Sacramento and its officials, agents and employees, an opinion addressing the following question:

May elected officials, and employees and agents of the City of Sacramento, utilize the exceptions set forth in 2 Cal. Admin. Code Section 18901(f) (as amended and adopted at the December 6, 1989 meeting of the Commission) now? If not, what is the operative date of 2 Cal. Admin. Code Section 18901?

Diane M. Griffiths
February 15, 1988
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Thank you for your time and anticipated prompt attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely

A handwritten signature in cursive script, appearing to read "Kim Mueller".

KIM MUELLER

Councilmember, District 6

cc: Sacramento City Councilmembers
Rich Archibald, City Attorney's office
Walt Slipe, City Manager



California Fair Political Practices Commission

February 22, 1989

Honorable Kim Mueller
Councilmember, District Six
City Hall, Room 205
915 I Street
Sacramento, CA 95814-2672

Re: Letter No. 89-119

Dear Ms. Mueller:

Your letter requesting advice under the Political Reform Act was received on February 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh